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John A. Artz
Artz & Artz
28333 Telegraph Road, Suite 250
Southfield, MI 48034

In re Application of:
George F. Kirkman
Application No. 09/615,019
Filed: July 13, 2000
Attorney Docket No. PD-990235

DECISION TO WITHDRAW
HOLDING
OF ABANDONMENT

This is a decision on the petition filed February 12, 2002, and supplemented on March 14, 2002, to withdraw the holding of abandonment in the above-identified application.

The petition is **granted**.

The application was held abandoned for failure to timely file a response to the Office action mailed on May 7, 2001. A Notice of Abandonment was mailed on December 13, 2001.

Petitioner asserts that a response was timely filed in the United States Patent and Trademark Office (PTO) via facsimile transmission on August 3, 2001. To support this assertion, petitioner has submitted a copy of a 5 page response bearing a certificate under 37 CFR 1.8(a) showing a date of transmission of August 3, 2001, a copy of a report from petitioner's facsimile machine which acknowledges satisfactory facsimile transmission of 5 pages to the PTO on August 3, 2001, and a statement which attests to the previous timely transmission of the response to the PTO.

A review of the application file record reveals that the above-identified response is not of record in the application file and cannot be located. However, 37 CFR § 1.8(b) provides for accepting a correspondence as being timely filed if it was mailed or transmitted in accordance with 37 CFR § 1.8(a), and is reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence: (1) informs the Office of the previous mailing or transmission of the

correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence; (2) supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and (3) includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

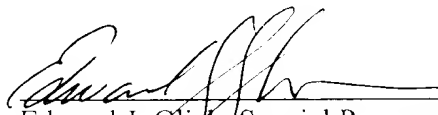
The petition, as supplemented, meets the conditions of 37 CFR 1.8(b) to establish the previous timely filing of the response. Accordingly, the petition is **granted**.

For the above stated reason, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The copy of the response submitted on March 14, 2002, is accepted since the response originally submitted was apparently lost.

The application file is being forwarded to the Technology Center 2800 support staff for entry of the response. From there, the application will be forwarded to the examiner for further examination.

Inquiries regarding this decision should be directed to Ed Glick at (703) 308-4858.



Edward J. Glick, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components